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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/612,641	07/01/2003	Cynthia Dianne Maas	19,448	3690
23556	7590	07/21/2005	EXAMINER	
KIMBERLY-CLARK WORLDWIDE, INC. 401 NORTH LAKE STREET NEENAH, WI 54956			HILL, LAURA C	
			ART UNIT	PAPER NUMBER
			3761	

DATE MAILED: 07/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.



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APPLICATION NO/ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER

ART UNIT	PAPER
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20050719

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents

Office Action Summary

Application No.

10/612,641

Applicant(s)

MAAS ET AL

Examiner

Laura C. Hill

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 2/14/05

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Information Disclosure Statement

1. It is noted that the EP 0460467 document as part of the information disclosure statement filed 14 February 2005 not previously considered has been considered.

Claim Interpretation

2. It is noted that the term 'stretchable' of claim 1 as defined by Applicant on page 4, lines 8-20 of the instant specification are interpreted to include 'any material capable of being extended or elongated under a force and then capable of contraction back to or towards its original length once the force is removed.'
3. The 'stretchable back panel spaced apart from said front panel' of claim 10b, 16b, and 22b is interpreted to mean that the stretchable panel is spaced apart any distance from the stretchable front panel in any manner. This language does not limit the back panel to being a separate and completely distinct element from the front panel. For example, your nose and foot are 'spaced apart' from each other but do not form detachable/separatable elements.
4. The 'front and back panels are discontinuous from one another' of claims 23-25 is interpreted to mean the front and back panels are marked by some kind of interruption between the area comprising the panels. The language does not necessarily limit the panels to being detached from one another or delineated by a precise boundary.

Claim Objections

5. Claim 2 is objected to because of the following informalities: the 'waist band is located on said exterior surface' is referred to as the 'first elastic band secured to outer surface 16' of front panel as on page 7 of the instant specification.

Appropriate correction is required to improve claim language consistency.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-3, 8, 10-11, 16 and 21-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Kuwasaka (EP 1,072,243A2). Regarding claims 1, 10, 16 and 22

Kuwasaka discloses a disposable diaper comprising:

a) a front waist region/panel 20 having first and second ends, first and second side edges, elastic members/first and third elastic bands 7 secured along a first end, and a second elastic member 5b secured along a second end;

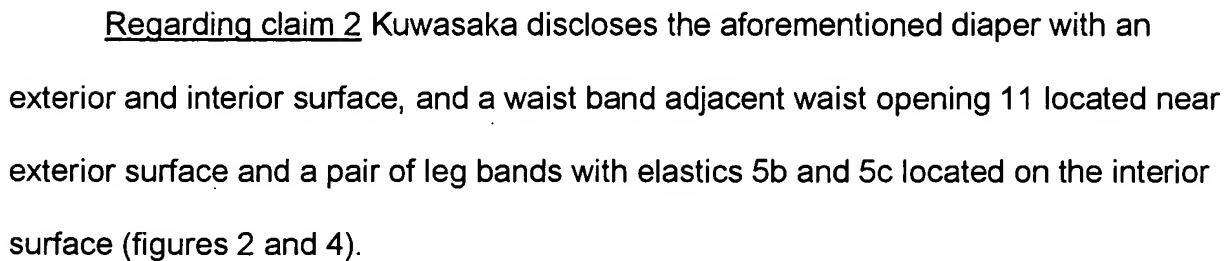
b) a rear waist region/back panel 22 having first and second ends, first and second side edges, elastic members/first and third elastic bands 7 secured along a first end, and a fourth elastic member 5c secured along a second end;

c) an absorbent including a liquid-pervious topsheet 2, liquid-impervious back sheet 3 and absorbent core 4 positioned between, said absorbent being secured to a laminated panel 1, with laminated panel 1 comprising said rear waist region/back panel

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22 spaced apart from said front waist region/panel 20, absorbent assembly on panel 1 is longitudinally folded to join front and rear waist regions/front and back panels

d) a pair of opposite side edges/seams 1a joining front and back panels 20 and 22 together at first and second side edges to form a pant-like undergarment with waist opening 11 and leg openings 10, said first and third elastic bands 7 located adjacent waist opening 11, said second and fourth elastic bands 5b and 5c creating a pair of leg bands located adjacent to said leg openings 10, and said fourth elastic member 5c having a stretch stress/stretching force 1.06 to 3 times greater than second elastic member 5b (figures 2 and 4, col. 2, ll. 55-col. 3, line 2, col. 3, ll. 7-11, 22-35 and 40-55, col. 4, ll. 28-32, col. 5, ll. 18-25, col. 6, ll. 34-40).



Regarding claims 3 and 11 Kuwasaka discloses a stretching force of the fourth elastic band 5c that is greater than that of the second elastic band 5b as discussed in

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rejected claims 1 and 10 that is capable of having a greater fourth elastic member contraction force than the second elastic member since the fourth elastic member stretches further than the second elastic member. If a prior art structure is capable of performing the intended use as recited in the preamble, then it meets the claim. See, e.g., *In re Schreiber*, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997).

Regarding claim 8 Kuwasaka discloses first elastic 7 extending between first and second side edges of front panel 20 and third elastic 7 extending between first and second side edges of back panel 22 (figure 2).

Regarding claim 21 Kuwasaka discloses the waistband elastics 7 and leg band elastics 5a, which like other elastics well known to those skilled in the art are capable of being stretched at least 200% from an initial length. If a prior art structure is capable of performing the intended use as recited in the preamble, then it meets the claim. See, e.g., *In re Schreiber*, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997).

Regarding claims 23-28 Kuwasaka discloses the spaced apart front and back panels 20 and 22 as discussed above with respect to claims 10, 16 and 22. Kuwasaka further discloses the front and back panels are discontinuous from one another and the panels and absorbent assembly are separate members since there is an intermediate portion 21 between the front and back panel (figures 1 and 5).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims 4-7, 9, 12-15, 17-20 rejected under 35 U.S.C. 103(a) as being

unpatentable over Kuwasaka (EP 1,072,243A2). Regarding claims 4-7 and 17

Kuwasaka discloses greater fourth elastic than second elastic stretching force capable of having a greater fourth elastic contraction force as discussed in rejected claims 1 and 3. Kuwasaka further discloses an intermediary stretch stress 5a in the crotch region of 0.0224-0.2716 gf/mm² to improve occurrence of compression marks due to the elastic members and improve leakage prevention of the article (col. 1, ll. 39-44 and col. 3, ll. 47-48). Kuwasaka does not expressly disclose the forces of the first and third elastic bands in the waistband or the forces of the front and back panels 20 and 22. One would be motivated to modify the forces of the first and third elastic bands since Kuwasaka discloses a disposable pant-like diaper with varying regions of stretching force contained in the elastics for improved fit and leakage prevention. Thus, it would be obvious to one of ordinary skill in the art at the time the invention to modify the forces, thus providing a fourth elastic band with the greatest stretching and contraction force of all the members.

Regarding claims 9 and 12-13 Kuwasaka discloses second and fourth elastic members 5b and 5c are secured under tension to strips of non-woven 6 to peripheries of respective leg-holes 10 and along peripheral edge of waist-hole 11 under tension (col. 5, ll. 19-25 and figures 1-3). Kuwasaka does not expressly disclose the absorbent assembly overlaps second and fourth elastic members 5b and 5c or that the second and fourth members are rendered non-elastic when overlapped. One would be motivated to modify the bands of Kuwasaka since Kuwasaka discloses elastic members secured to panel 1 and Kuwasaka further discloses a disposable pant-like diaper with varying regions of stretching force contained in the elastics for improved fit and leakage prevention. Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to modify the absorbent assembly of Kuwasaka, thus providing overlapping bands rendered non-elastic.

Regarding claims 14-15 Kuwasaka discloses a waistband with elastic members 7 and leg band elastics 5a-5c but does not expressly disclose the number of strands in the elastic members. One would be motivated to modify the number of strands in the elastic members since Kuwasaka discloses a disposable pant-like diaper with varying regions of stretching force contained in the elastics for improved fit and leakage prevention. Therefore, it would be obvious to one of ordinary skill in the art at the time to modify the number of elastic strands, thus providing waistband elastics having more elastic strands than the leg bands.

Regarding claims 18-20 Kuwasaka discloses a disposable pant-like diaper for improved fit as discussed in rejected claims 1 and 16. Kuwasaka does not expressly

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disclose width dimensions of the waistband or leg bands. One would be motivated to modify the dimensions of the waistband and leg bands since Kuwasaka discloses a disposable pant-like diaper with varying regions of stretching force contained in the elastics for improved fit and leakage prevention. Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to modify the waistband elastics, thus providing more elastic strands.

Response to Arguments

Applicant's arguments filed 2 June 2005 have been fully considered but they are not persuasive.

8. In response to applicant's argument that 'the front and back regions of Kuwasaka are not stretchable' (see Remarks page 10, paragraph 4, line 11), the Examiner notes that the front panel of Kuwasaka contain elastic members 5c and back panels contain elastic members 5b (column 7, lines 10-18). Since the back and front panels of Kuwasaka contain elastic members, the panels are 'stretchable' and the claim limitations are met.

9. In response to applicant's argument that the references fail to show certain features of applicant's invention (see Remarks, page 11, lines 2-4 and 16-30), it is noted that the features upon which applicant relies (i.e., a stretchable front panel that *is separate and distinct from* a stretchable back panel) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

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10. In response to applicant's argument that 'The Kuwasaka's absorbent does not include a top sheet, a back sheet and an absorbent core as claimed by Applicant's' (see Remarks page 11, lines 11-12), see column 2, lines 55-column 3, line 2 as discussed above with respect to claim 1c.

11. In response to applicant's argument that the references fail to show certain features of applicant's invention (see Remarks, page 11, lines 12-13), it is noted that the features upon which applicant relies (i.e., 'a separate absorbent assembly') are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Furthermore, the absorbent assembly (comprising the top sheet, back sheet and core) is secured to front and back panels as seen in figure 2.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C. Hill whose telephone number is 571-272-7137. The examiner can normally be reached on Monday through Friday (off every other Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Laura C. Hill
Examiner
Art Unit 3761

LCH



TATYANA ZALUKAEVA
PRIMARY EXAMINER

